



EFSC and County Comparison for Solar Facilities

The table below shows the current county jurisdictional thresholds for solar facilities and the proposed changes to those thresholds based on the HB 3179 -4 Amendment.

	County Threshold and Current CUP Process Only	Current County Threshold and Current CUP and HB 2329 Process	Proposed County Threshold and Current CUP and HB 2329 Process
Solar on High Value Farmland	<=100 Acres	>100 acres to <=160 Acres	>100 acres to <=240 Acres
Solar on predominantly cultivated land	<=100 Acres	>100 Acres to <=1,280 Acres (2 square miles)	>100 Acres to <=2,560 Acres (4 square miles)
Solar other land	<=320 Acres	>320 Acres to <=1,920 Acres (3 square miles)	>320 Acres to <=3,840 Acres (6 square miles)

As a result of HB 2329, passed during the 2019 legislative session, counties have two sets of standards they must apply to proposed solar facilities. Facilities within the pre-HB 2329 jurisdictional thresholds must meet all applicable county conditional use permit requirements. Facilities above the pre-HB 2329 jurisdictional thresholds but within the HB 2329 thresholds must apply all applicable county conditional use permit requirements in addition to further requirements in ORS 215.446, required by bill.

The table below provides some general comparisons between the state’s Energy Facility Siting Council (EFSC) review and that of counties. While solar facilities could occur in many zoning designations, the vast majority are in the Exclusive Farm Use land use designation (EFU). Therefore, all remaining county comparisons in this document are based on the applicable requirements related to the EFU.

	EFSC	County
Active Solar Projects	3,729 MW on 39,526 acres (61.7 sq miles)	1,116 MW on 18,290 acres (28.5 sq. miles)
Public Participation Opportunities	<ul style="list-style-type: none"> • Property Owner/Public Notices - 4 • Newspaper Notices - 3 • Commentor Notices - 2 • Public Informational Meetings - 2. These are optional but both are consistently held either in person/virtually or virtually. • Public Hearing - 1. In person and in vicinity of project. 	<ul style="list-style-type: none"> • Property Owner/Public Notice - 1 • Newspaper Notices - 0. But individual counties could require. • Commentor Notice - 1 • Public Hearing - 1

Appellate Path	Appeal of Council final decision goes directly to the Oregon Supreme Court with a six-month deadline to reach a final opinion. Recently the Court reached a final opinion on the 300-mile-long Boardman to Hemingway Transmission Line project in four months that included 3 parties and 10 issues.	Appeal path of County final decision: <ul style="list-style-type: none"> • Oregon Land Use Board of Appeals • Oregon Court of Appeals • Oregon Supreme Court
Fees	ORS 469.421(1). Applicants shall pay all necessary, just and reasonable expenses incurred by EFSC, the Department and reviewing agencies.	ORS 215.416(1). Fees shall not exceed actual or average real costs. But counties have the authority to set fees to cover all review costs, including the hiring of consultants.
Burden of Proof	OAR 345-021-0100(2). The applicant has the burden of proving, by a preponderance of the evidence that the facility complies with all requirements.	ORS 197.797(2)(a)(h) and (9)(b). The applicant has the burden to submit evidence to demonstrate compliance with the standards.
Ex-Parte Communication	OAR 137-003-0055(1)). EFSC members may not engage in an oral or written communication concerning an application without disclosing it on the record. Department staff are not subject to this communication requirement.	ORS 215.422(3). Planning Commission or County Governing body must include any written or oral communications on the record or there is a risk of appeal by that failure. County staff are not subject to this communication requirement.
Decision Timeframe	ORS 469.370(9)(d). The council shall either approve or reject an application for a solar facility within twelve months after application is deemed complete. ORS 469.370(10). For an expedited review (<100 MW) the timeframe is six months.	ORS 215.427. The final local land use decision must be within 150 days after application is deemed complete.

The table below includes EFSC standards associated with solar facilities and any county equivalent. There are sixteen EFSC standards applicable to solar facilities but only the six determined to be the most relevant to this comparison are included in the table below.

Standard	EFSC	County Equivalent
Land Use	<p><u>Option 1</u> – Applicant elects to have the county review the local land use requirements. See county equivalent.</p> <p><u>Option 2</u> – Applicant elects to have EFSC review the local land use requirements. These include:</p> <ul style="list-style-type: none"> • comprehensive plan and land use ordinances that are required by the statewide planning goals and in effect on the date the application is submitted • directly applicable Land Conservation and Development Commission (LCDC) statutes and standards 	<p>All county comprehensive plan and land use ordinance provisions are derived from LCDC’s statutes and rules.</p> <p><u>Conditional Use Permit (CUP) Only</u> Some statutes and rules are required by every county: ORS 215.296 - Standards for approval of certain uses in exclusive farm use zones... OAR 660-033-0130(38) – Specific standards for solar generation facilities</p>

	<p><u>Goal Exception - ORS 469.504 (2)</u>. While all other land use requirements in the EFU applied by EFSC are derived from LCDC statutes and rules, EFSC has its own goal exception requirement. While this largely mirrors that of LCDC, it does not require and alternatives analysis and is therefore easier.</p> <p>However, the EFU acreage and soil thresholds are set in LCDC rules. See county equivalent. Because all EFSC jurisdictional solar projects exceed these thresholds, they all require an exception to Goal 3 – Agricultural Lands.</p>	<p>However, OAR 660-033-0120 allows counties to prescribe additional limitations and requirements to meet local concerns. Because there are 36 counties there is the possibility of 36 permutations of additional limitations and requirements to meet local concerns.</p> <p><u>CUP & HB 2329</u> In addition to the CUP requirements above, ORS 215.466 requires solar projects above the HB 2329 threshold to also meet further requirements. These are described in the specific standards below.</p> <p><u>Goal Exception - OAR 660-033-0130(38)</u> sets the following limits acreage limits on solar facilities.</p> <ul style="list-style-type: none"> -12 acres on high value farmland -20 acres on arable soils -320 acres on nonarable lands <p>However, (k) of that same rule allows for an exception to these acreage and soil thresholds, as established in ORS 197.732 and OAR 660 Division, regardless of county or location.</p>
<p>Retirement and Financial Assurance</p>	<p>Applicant has to demonstrate:</p> <ul style="list-style-type: none"> • the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. • it has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non- hazardous condition <p>Two mandatory conditions applicable to all facilities:</p> <ul style="list-style-type: none"> • Before beginning construction of the facility, must submit a bond or letter of credit in a form and amount satisfactory to restore what is being constructed to a useful, non-hazardous condition and maintain a bond or letter of credit in effect at all times until the facility has been retired. • Must retire the facility if construction or operation is permanently ceased. Must retire the facility according to a 	<p><u>CUP Only – OAR 660-033-0130(38)(m)</u> – Counties are allowed but not obligated to require a bond or other security from a developer to retire a solar facility. Because this is not mandatory, there is variation by county on whether this is included and if it is, what is required.</p> <p><u>CUP & HB 2329</u> – In addition to the requirements above, ORS 215.446(3)(c) & (e) includes:</p> <ul style="list-style-type: none"> • demonstrating that the site for a renewable energy facility, taking into account mitigation, can be restored adequately to a useful, nonhazardous condition following permanent cessation of construction or operation of the facility • that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the county to secure restoration of the site to a useful, nonhazardous condition

	<p>final retirement plan approved by the Council, as described in OAR 345-027-0410 and pay all associated costs.</p> <p>Additionally, all financial instruments must be updated annually for inflation.</p> <p>Of the ten solar projects approved by EFSC, the lowest financial assurance amount is 2.7 million, the highest is 28.8 million and the average is 9.3 million.</p>	<ul style="list-style-type: none"> • providing the financial assurance in a form and at a time specified by the county. <p>An assessment would have to be conducted of the approved HB 2329 projects to determine how this is being implemented.</p>
<p>Historic, Cultural and Archaeological Resources</p>	<p>Applicant can construct and operate the facility, taking into account mitigation, so that is not likely to result in significant adverse impacts to:</p> <ul style="list-style-type: none"> • Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places; • Archeological objects and site on private or public land as defined in ORS 358.905(1) <p>This includes appropriate discovery measures such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources as well as a monitoring program related to impacts during construction and operation.</p> <p>Because tribal governments identified by the Legislative Commission on Indian Services that could be affected by the project are part of the EFSC review process, they have the opportunity to review project related materials, provide comments and receive reimbursement for their time.</p>	<p><u>CUP Only</u> – Counties have Land Use Goal 5 (Historic, etc...) inventories in their comprehensive plans and associated implementing land use ordinances. However, these are typically above ground resources only and some of these inventories have not been updated since they were originally adopted in the late 1970's/early 1980's.</p> <p>Individual counties may include additional requirements associated with the protection of cultural and archeological resources.</p> <p><u>CUP & HB 2329</u> – In addition to the requirements above, ORS 215.446(3)(b) includes notification to the State Historic Preservation Office and any affected federally recognized Indian tribe that may be affected. However, it is unclear how counties determine which tribes may be affected.</p> <p>As part of the requirement the applicant must demonstrate that the construction and operation of the facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources that are:</p> <ul style="list-style-type: none"> • Listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.); • Inventoried in a local comprehensive plan; or • Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905.

		However, the statute does not require coordination with the State Historic Preservation Office or describe discovery measures such as surveys, inventories and subsurface testing to help determine potential significant adverse impacts to historic, cultural and archaeological resources.
Fish and Wildlife Habitat	<p>Applicant can design, construct and operate the facility, taking into account mitigation, consistent with ODFW habitat mitigation policies. Includes appropriate surveys, consultation with ODFW and avoidance, minimization and necessary mitigation as described below:</p> <p>Habitat Category 1 – Irreplaceable and essential habitat. Avoidance only.</p> <p>Habitat Category 2 – Essential habitat. If cannot avoid, in kind, in proximity mitigation with no net loss to habitat quantity or quality and a net benefit.</p> <p>Habitat Category 3 – Essential habitat. If cannot avoid, in kind, in proximity mitigation with no net loss to habitat quantity or quality.</p> <p>Habitat Category 4 – Important habitat. If cannot avoid, in kind or out of kind, in proximity or out of proximity mitigation with no net loss to habitat quantity or quality.</p> <p>Habitat Category 5 – High potential to become essential or Important habitat. If cannot avoid, net benefit to habitat quantity or quality.</p> <p>Habitat Category 6 – Low potential to become essential or Important habitat. If cannot avoid, minimize impact.</p>	<p><u>CUP Only</u> – Counties have Land Use Goal 5 (Natural Resources, etc...) inventories in their comprehensive plans and implementing land use ordinances. However, some of these inventories have not been updated since they were originally adopted in the late 1970's/early 1980's.</p> <p>OAR 660-0130-33 38(G) - Requires consultation with ODFW, a habitat assessment where necessary and the development a mitigation plan where necessary. If the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any.</p> <p><u>CUP & HB 2329</u> – In addition to the requirements above, ORS 215.446(3)(a) requires consultation with ODFW, a habitat assessment of the proposed development site and the development of a mitigation plan to address fish and wildlife habitat impacts consistent with OAR 635-415-0000 through 0025. Because of the lack clarity on what constitutes “consistency”, one project was appealed to the local County Court, then to the Land Use Board of Appeals and then to the Oregon Court of Appeals and ultimately remanded back to the county.</p>
Noise	<p>EFSC implements the Oregon Department of Environmental Qualities (DEQ) noise regulations at OAR 340-035-0035.</p> <p>DEQ's webpage includes an “Internal Management Directive” that describes the termination of the implementation of the noise control program. Some key takeaways of that directive are:</p>	As indicated on DEQ's webpage, enforcement of the noise rules falls to local government, other agencies and specifically, EFSC. However, it is not known how many counties implement DEQ's noise rules at OAR 340-035-0035.

- In the 70s and 80s DEQ participated in local government land-use planning to ensure noise issues/conflicts were acknowledged and addressed.
- In 1991, with legislative approval, DEQ terminated the noise control program due to general fund reductions. See OAR 340-035-0110.
- While the program has been terminated, the statutes and rules remain in place. Regulated sources must still comply with the rules, however enforcement now falls to local governments, other agencies and specifically, EFSC.
- Under ORS 467.100, cities and counties are also specifically authorized to adopt and enforce their own noise ordinances and standards.

Since 2017, EFSC has received eight solar specific energy facility applications that would physically occupy approximately 30 square miles. All eight of these applications include an evaluation of the potential noise impacts associated with noise generating equipment which includes:

- inverters
- transformers
- transmission lines
- HVAC units associated with battery energy storage systems

The operational dBA associated with this noise generating equipment ranges from 46 – 106 at the noise source. The higher end of this range is well above the maximum threshold in DEQ’s maximum permissible hourly statistical noise level and therefore justifies evaluation to ensure the health safety and welfare of residents of noise sensitive properties within one mile of each project are protected. Of the eight solar specific applications received to date, there have been 81 noise sensitive properties within 1-mile of the proposed facilities and 17 modeled exceedances of the ambient noise degradation standard.

<p>Waste Minimization</p>	<p>To the extent reasonably practicable, the applicant will minimize the generation of solid waste in the construction and operation of the facility, and when they are generated, recycling and reuse such wastes; and the plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas. Below are examples of two conditions implementing this standard.</p> <ul style="list-style-type: none"> • Prior to operation of solar facility components, the certificate holder shall develop a Solar Panel Recycling Plan or protocol requiring that damaged or nonfunctional panels be recycled through the Solar Energy Industries Association National PV Recycling Program (or similar program), to the extent practicable. The certificate holder shall report in its annual report to the Department the quantities of panels recycled, reused or disposed of in a landfill. • During operation of solar facility components, the certificate holder shall adhere to the requirements of the Solar Panel Recycling Plan or protocol developed under Waste Minimization Condition 4. 	<p>Per OAR 660-033-0120, which allows counties to prescribe additional limitations and requirements to meet local concerns, individual counties may have waste minimization standards.</p>
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Additional EFSC standards are: Threatened and Endangered Species, Protected Areas, Scenic Resources, Recreation Resources, Public Services, Wildfire Prevention and Risk Mitigation, General Standard of Review, Organizational Expertise, Structural and Soils.